



OFFICE OF THE POLICE COMMISSIONER
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October 31, 2017

Memorandum for: Deputy Commissioner, Trials

Re: **Detective Derick Cuebas**
Tax Registry No. 913757
Housing Borough Manhattan
Disciplinary Case No. 2016-15425

The above named member of the service appeared before Assistant Deputy Commissioner Jeff S. Adler on July 18, 2017, charged with the following:

DISCIPLINARY CASE NO. 2016-15425

1. Said Detective Derick Cuebas, while on-duty and assigned to the Internal Affairs Bureau, Group 22, on or about March 10, 2016, at his command in Bronx County, did speak discourteously to Sergeant William Tergesen. *(Dismissed)*

P.G. 203-09, Page 1, Paragraph 2

**PUBLIC CONTACT –
GENERAL**

2. Said Detective Derick Cuebas, while on-duty and assigned to the Internal Affairs Bureau, Group 22, on or about March 10, 2016, at his command in Bronx County, disobeyed the lawful order of Sergeant William Tergesen, instructing said Detective Cuebas to sit down. *(Dismissed)*

P.G. 203-05, Page 1, Paragraph 1

**PERFORMANCE ON
DUTY - GENERAL**

3. Said Detective Derick Cuebas, while on-duty and assigned to the Internal Affairs Bureau, Group 22, on or about March 10, 2016, at his command in Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective Cuebas engaged in a physical altercation with Sergeant William Tergesen.

P.G. 203-10, Page 1, Paragraph 5

CONDUCT PREJUDICIAL

DETECTIVE DERICK CUEBAS

DISCIPLINARY CASE NO. 2016-15425

In a Memorandum dated September 8, 2017, Assistant Deputy Commissioner Jeff S. Adler found Detective Derick Cuebas Guilty to Specification No. 3 and dismissed Specification Nos. 1 and 2 in Disciplinary Case No. 2016-15425. Having read the Memorandum and analyzed the facts of this matter, I approve the findings but disapprove the penalty for Detective Cuebas.

I have considered the totality of the misconduct for which Detective Cuebas was found Guilty, and deem that a greater penalty is warranted. Therefore, Detective Cuebas's disciplinary penalty shall be the forfeiture of thirty-two (32) suspension days, previously served.


James P. O'Neill
Police Commissioner



POLICE DEPARTMENT CITY OF NEW YORK

September 8, 2017

MEMORANDUM FOR: Police Commissioner

Re: Detective Derick Cuebas
Tax Registry No. 913757
Housing Borough Manhattan
Disciplinary Case No. 2016-15425

Charges and Specifications:

1. Said Detective Derick Cuebas, while on-duty and assigned to the Internal Affairs Bureau, Group 22, on or about March 10, 2016, at his command in Bronx County, did speak discourteously to Sergeant William Tergesen. (*Dismissed*)
P.G. 203-09, Page 1, Paragraph 2 – PUBLIC CONTACT GENERAL
2. Said Detective Derick Cuebas, while on-duty and assigned to the Internal Affairs Bureau, Group 22, on or about March 10, 2016, at his command in Bronx County, disobeyed the lawful order of Sergeant William Tergesen, instructing said Detective Cuebas to sit down. (*Dismissed*)
P.G. 203-05, Page 1, Paragraph 1 – PERFORMANCE ON DUTY–GENERAL
3. Said Detective Derick Cuebas, while on-duty and assigned to the Internal Affairs Bureau, Group 22, on or about March 10, 2016, at his command in Bronx County, engaged in conduct prejudicial to the good order, efficiency or discipline of the Department, to wit: said Detective Cuebas engaged in a physical altercation with Sergeant William Tergesen.
P.G. 203-10, Page 1, Paragraph 5 – CONDUCT PREJUDICIAL

Appearances:

For the Department: Joshua Kleiman, Esq.
Department Advocate's Office
One Police Plaza
New York, NY 10038

For Respondent: Marissa Gillespie, Esq.
Karasyk & Moschella, LLP
233 Broadway, Suite 2340
New York, NY 10279

Hearing Dates:

July 18 and August 9, 2017

Decision:

Guilty

Trial Commissioner:

ADCT Jeff S. Adler

REPORT AND RECOMMENDATION

The above-named member of the Department appeared before me on July 18 and August 9, 2017. Specifications 1 and 2 were dismissed by the Advocate prior to trial. Respondent, through his counsel, entered a plea of Not Guilty to the remaining charge. The Department called Sergeant William Tergesen, Sergeant Eric Ruiz, and Sergeant Robert Loccisano as witnesses. Respondent called Detective Kai Mendez, Sergeant Raymond Clarke, and SPAA Joanna Baulkman as witnesses, and testified on his own behalf. Respondent also introduced the hearsay statement of now-retired Detective Person A. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

DECISION

After reviewing the evidence presented at the hearing, and assessing the credibility of the witnesses, I find Respondent guilty of the charged misconduct.

FINDINGS AND ANALYSIS

This case involves an altercation between Respondent and Sergeant William Tergesen that occurred inside the Bronx IAB offices on the afternoon of March 10, 2016. Both were with Group 22 at the time, though they were assigned to different teams. The seeds for their altercation were largely sown a day earlier when Sergeant Tergesen, a

supervisor on his floor, questioned Respondent and his partner for signing out a few minutes before the end of their tour.

Sergeant Tergesen testified that on March 9, the day before the physical altercation, his tour began at 1425 hours. As he was sitting at his desk, the sergeant noticed that Respondent and Detective Kai Mendez were signing out a few minutes before the conclusion of their tour, which was scheduled to end at 1433 hours. Sergeant Tergesen approached them by the elevator and told them that they couldn't leave early. The detectives agreed to wait, though Respondent told the sergeant, "You didn't have to do it like that, Billy." The sergeant felt that Respondent's referring to him as "Billy" was belittling and disrespectful. (Tr. 23-25, 34-36, 43-44)

According to Sergeant Tergesen, as Respondent was preparing to sign out at about 1430 hours the next day, he looked over in Sergeant Tergesen's direction several times and called out to him, "Hey, Billy, can I go home?" The sergeant told Respondent to stop being a wise-ass, and that if it was the end of his tour he could go home. Sergeant Tergesen testified that Respondent was being very obnoxious and disrespectful, and so he walked over to Respondent, who was 15-to-20 feet away, to discuss the matter more privately. Sergeant Tergesen drew within three-to-four feet of Respondent and said to him, in a normal tone, that what happened the day before was over, and that he should just go home. (Tr. 26-28, 46-47, 55-56)

The sergeant testified that his attempt to defuse the situation failed, as Respondent continued to speak to him in a confrontational and aggressive manner. As a result, Sergeant Tergesen instructed Respondent to sit down and remain for "return roll call," meaning that Respondent would need to stay beyond the end of his tour to discuss the

situation with the lieutenant. Respondent raised his voice, moved closer to Sergeant Tergesen, and put his chest within an inch of the sergeant's face while raising his hands. Sergeant Tergesen then informed Respondent that he was being suspended. Respondent shouted, "You can't fucking suspend me," and swung at the sergeant's face. As Sergeant Tergesen backed away to avoid the blow, he fell to the floor with Respondent on top of him. Respondent screamed at Sergeant Tergesen and tried to punch him in the face, but Sergeant Eric Ruiz, a member of Sergeant Tergesen's team, grabbed Respondent's arm to prevent any punches, while someone else pulled Sergeant Tergesen out from under Respondent. Sergeant Tergesen insisted he only raised his hands to defend himself, and did not put his finger on Respondent's chest or physically touch Respondent at any point. The sergeant was approximately 5'7", 180 pounds at the time of the incident. (Tr. 28-31, 56-58, 60-61)

Sergeant Eric Ruiz testified that he heard Respondent, in a normal tone, ask Sergeant Tergesen if it was okay to sign out. Sergeant Tergesen asked him why he was being a wise guy, and Respondent replied that he was just asking a question. Sergeant Tergesen approached Respondent and ordered him to "return roll call." An angry Respondent loudly questioned Sergeant Tergesen's command, and aggressively chest bumped him. Sergeant Tergesen jumped back a bit, pointed his finger at Respondent, and told him that now he was going to be suspended. After seeing Respondent raise his arm, Sergeant Ruiz stood up to intervene; in his haste to do so, Sergeant Ruiz momentarily stumbled over his garbage can and did not witness a part of what occurred. (Tr. 66-67, 76-78, 85-86, 89)

According to Sergeant Ruiz, Respondent and Sergeant Tergesen had moved to the left and were on the floor. Sergeant Ruiz testified that he ran over to them and observed Respondent on top of Sergeant Tergesen, cursing at him, with his right arm poised to swing at the sergeant beneath him. Sergeant Ruiz grabbed a hold of Respondent's arm, preventing the punch. He repeatedly told Respondent to get off of Sergeant Tergesen, but Respondent was bigger than Sergeant Ruiz and it was difficult to pry him away. Other officers came to assist in breaking up the altercation, including Lieutenant Sena who pulled Sergeant Tergesen from underneath Respondent. (Tr. 67-68, 74, 80, 95)

Sergeant Ruiz prepared a diagram of the office layout to illustrate the approximate locations of the parties during the incident. (Dept. Ex. 1) He and other witnesses used the diagram to mark their approximate locations.

Sergeant Robert Loccisano, who was part of Respondent's team at the time of the incident, testified that he was sitting at his desk when he heard Sergeant Tergesen say the word "suspended." He testified that he did not hear any other order being given by Sergeant Tergesen, though in his Department interview on the day of the incident he stated that he also heard Sergeant Tergesen tell Respondent, "Go to your desk." (Tr. 109, 116, 121)

According to Sergeant Loccisano, he looked up and saw Sergeant Tergesen and Respondent "entangled." Respondent was moving forward, while Sergeant Tergesen was moving in a backward direction, and the two of them fell to the floor, with Respondent on top of Sergeant Tergesen. Sergeant Loccisano testified that he grabbed Respondent's right arm in an attempt to separate the two. He observed Respondent's right arm "cocked back," though he did not see Respondent actually punch Sergeant Tergesen. Respondent

appeared to be upset, and needed to be physically separated from Sergeant Tergesen. (Tr. 110-111, 114, 117)

Detective Kai Mendez, who was Respondent's friend at the time of the incident, testified regarding the events of March 9. When the clock on her desk phone indicated that her tour was over at 1433 hours, she and Respondent walked to the command log and signed out. They had just walked out the door when Sergeant Tergesen "stormed out" behind them. Sergeant Tergesen appeared angry and red-faced, and demanded that she and Respondent check their phones to see what time it was. Respondent and Detective Mendez both told him that their tour was over, but Sergeant Tergesen stated that according to his phone it was only 1431 hours, and that they needed to be "on the same page." (Tr. 126-127, 131)

Another member of Sergeant Tergesen's team, Sergeant Lawrence, arrived for work at that moment, and she and Detective Mendez walked back inside the office. Respondent and Sergeant Tergesen remained outside talking for one-to two minutes, then came inside the office as well. Both Detective Mendez and Respondent "lined-out" their names from the command log, then signed out again underneath the line where Sergeant Lawrence signed in. (Tr. 129-130, 132) A copy of the command log for March 9 (Resp. Ex. A) shows the initial sign-out signatures of Respondent and Detective Mendez, which are both crossed out. Beneath that appears the sign-in for Sergeant Lawrence, followed by Respondent and Detective Mendez again signing out.

Sergeant Raymond Clarke, who also was on the same team as Respondent at the time of the incident, testified that he was at his desk on the phone when he heard Respondent, who was standing near the command log, ask Sergeant Tergesen if it was

okay to sign out now. Sergeant Tergesen, who was at his desk, responded by asking if that was a "smart-ass remark." Sergeant Tergesen walked toward Respondent and they had a conversation, but Sergeant Clarke returned his attention to his phone call and did not hear much of what was being said. (Tr. 141-142)

According to Sergeant Clarke, when he looked up again he observed the two men in a "tussle," though he could not say how the altercation began. They were both standing and holding onto each other, while two other sergeants, Ruiz and Loccisano, tried to pull the men apart. Sergeant Clarke did not recall seeing them on the floor at any point during the struggle, and did not see any punches thrown. (Tr. 143-144, 147-148)

Two photographs of the office, which showed the locations of the various desks on the date of the incident, were introduced into evidence (Respondent Exs. B and C).

Senior Police Administrative Aide Joanna Baulkman testified that from her Group 22 office she heard Respondent, in a normal tone, ask Sergeant Tergesen about signing in. She also heard the sergeant say that Respondent was being smart. When Sergeant Tergesen walked toward Respondent, Baulkman, who admitted she was nosy, got up to see what was happening. She observed the two men facing each other, and became alarmed that "this can be something." As she was looking around to see if there was anyone else who noticed, the two men started tussling and people ran toward them, at which point Baulkman retreated back into her office. Baulkman did not see any punches thrown, and did not see how the altercation started. (Tr. 152-157, 160-161)

Detective Person A, who was in Group 21 at the time of the incident, has since retired from the Department. She [REDACTED] was unable to appear to testify. A recording of her Department interview from March 10, 2016, along with the

accompanying transcript, were introduced into evidence as Resp. Exs. D and E, respectively.

In her interview, Detective Person A stated that as she was coming from the lieutenant's office she heard loud voices, and observed Sergeant Tergesen and Respondent "in each other's face." According to Detective Person A, the sergeant had his hand up in Respondent's face, and also against his chest. Respondent told the sergeant not to touch him, and pushed the hand away. A struggle ensued, and both men went to the floor, where people intervened to separate them. Detective Person A claimed that she did not see how they got to the floor, and did not see any punches thrown. (Resp. Ex. E at 4-6)

Respondent testified that on March 9, he looked at his watch and office clock and saw that it was 1433 hours, which was the end of his tour. He and Detective Mendez signed out and left the office. Sergeant Tergesen followed them out to the elevator and demanded that Respondent take out his cell phone and check the time because they had left early. Respondent complied and informed the sergeant that it was after their end of tour. Sergeant Tergesen told Respondent that he should ask if everyone is in before signing out, and stressed that they "need to be on the same page." Respondent maintained that they had not left early. Sergeant Lawrence arrived and went inside the office along with Detective Mendez. Respondent asked to speak briefly with Sergeant Tergesen, then they, too, went inside the office. Sergeant Lawrence signed in, and Respondent and Detective Mendez lined out their original signatures and signed out again beneath Sergeant Lawrence's signature. Respondent acknowledged that he found the experience to be annoying. (Tr. 169-172, 195, 204)

Before signing out the following day, Respondent noticed that someone might be missing and said to Sergeant Tergesen, "Billy, is everyone in?" The sergeant exploded and told him not to be a wise-ass, and Respondent explained he was just asking a question. Respondent testified that Sergeant Tergesen jumped up and ordered Respondent to "return roll call" at his desk. Respondent was confused, and asked the sergeant what was the problem. Sergeant Tergesen walked toward Respondent and repeatedly asked him if he wanted to be suspended. According to Respondent, Sergeant Tergesen put his finger close to Respondent's face, then placed his finger on Respondent's chest, and Respondent pushed the sergeant's hand away. Sergeant Tergesen grabbed Respondent's arms, Respondent placed his hands on the sergeant, and Sergeant Tergesen tugged them both to the floor. Respondent denied punching or attempting to punch the sergeant. Other members pulled them apart, and Respondent ended up with a bruise to his right arm at some point during the altercation, as depicted in a photograph introduced into evidence (Resp. Ex. F). Respondent stated that he was approximately 5'11", 300 pounds at the time. (Tr. 180-185, 205-210)

It is alleged that Respondent committed misconduct by engaging in a physical altercation with Sergeant Tergesen. Counsel for Respondent suggests that Respondent was legitimately questioning the sergeant as to whether it was okay to sign out, and that Sergeant Tergesen overreacted to what he perceived as a slight. The Department Advocate counters that Respondent deliberately provoked the confrontation, and was fully engaged in the physical altercation that followed.

Regarding the preliminary incident of March 9, Sergeant Tergesen testified that he confronted Respondent and his partner, Detective Mendez, for signing out early. The

detectives both denied doing so, but they acknowledged that they did go back inside the office, lined out their signatures, and signed out a second time beneath the signature of Sergeant Lawrence. Based on the detectives' willingness to return to the office and line out their original signatures, it is more likely than not that they did, indeed, sign out early. In any event, what is most significant about the events of March 9 is that the actions of Sergeant Tergesen annoyed Respondent in a way that influenced what occurred the following day.

It is undisputed that Respondent and Sergeant Tergesen engaged in a physical altercation on March 10. However, they each provided conflicting accounts of that altercation, and presented multiple witnesses in an attempt to provide corroboration for their positions. Several of these witnesses only offered a general description of what occurred, without details of how the physical altercation actually unfolded. Retired Detective Person A provided some corroboration for Respondent, though she did not appear to testify and was not subjected to cross examination on the details of what she observed. The most useful accounts came from Sergeant Ruiz and Sergeant Loccisano, both of whom provided corroboration of Respondent's aggressive behavior during the incident.

Sergeant Ruiz's description of events essentially supported Sergeant Tergesen's version. Although he had a potential bias as a member of Sergeant Tergesen's team, Sergeant Ruiz came across as detailed, consistent, and forthright in his testimony, and I credit his account. He heard the initial conversation about signing out, and how Sergeant Tergesen asked Respondent why he was being a wise guy. He then observed Respondent react angrily to being ordered to "return roll call," and saw Respondent chest bump

Sergeant Tergesen. Even though that description is slightly at odds with Sergeant Tergesen's testimony that Respondent stuck his chest within an inch of his face but did not actually make contact, what is important is the confirmation of how Respondent aggressively moved in close to Sergeant Tergesen, thereby escalating the encounter. Sergeant Ruiz saw Sergeant Tergesen jump back before pointing his finger at Respondent and telling him that he was suspended. Although Sergeant Ruiz then briefly lost sight of them, he did observe Respondent on top of Sergeant Tergesen cursing at him, with his right arm poised to punch the sergeant beneath him. Respondent was so committed to getting at Sergeant Tergesen that it took the combined efforts of Sergeant Ruiz and others to wrest him away from the sergeant.

Sergeant Loccisano, a member of Respondent's team, was not as detailed in his account, but did provide some significant observations. He noted that when the parties were moving to the left before going to the floor, it was Respondent who was going forward while Sergeant Tergesen was moving in a backward direction. He also observed a visibly upset Respondent on top of Sergeant Tergesen, with his right arm cocked back. With this testimony, Sergeant Loccisano further supported Sergeant Tergesen's contention that Respondent behaved aggressively during this physical altercation.

In light of this corroboration, I credit Sergeant Tergesen's account of what occurred, and find that Respondent did engage in misconduct on March 10. It was clear from the credible evidence that Respondent was annoyed with Sergeant Tergesen for what occurred on March 9, and that led to his instigating a confrontation with the sergeant the next day. Initially, Respondent provoked Sergeant Tergesen by sarcastically asking him if it was okay to sign out. Respondent then became further upset when he

received a "return roll call" instruction from Sergeant Tergesen. Regardless of whether such an instruction was warranted under the circumstances, Respondent's response was inappropriate. Respondent raised his voice, moved in close and stuck his chest out at Sergeant Tergesen, which led to the sergeant informing him that now he was going to be suspended. Respondent then took a swing at Sergeant Tergesen, which did not connect only because the sergeant ducked away. After the two fell to the floor. Respondent continued his aggressive behavior, as he cursed at Sergeant Tergesen and pulled back his arm to swing at the sergeant again. Only the intervention of several other members of service prevented Respondent's fist from connecting with its intended target.

Respondent's conduct on March 10 was prejudicial to the good order and discipline of the Department. Under the circumstances, his belligerent behavior toward Sergeant Tergesen was inexcusable. The credible evidence has established that Respondent did wrongfully engage in a physical altercation with Sergeant Tergesen, and I find him guilty.

PENALTY RECOMMENDATION

In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Respondent was appointed to the Department on April 30, 1991. Information from his personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum. Respondent has no formal disciplinary history.

The Department Advocate recommends that Respondent forfeit twenty (20) suspension days already served on pre-trial suspension, and that twelve (12) suspension days be restored. In *Disciplinary Case Nos. 9912/13 and 10294/13* (Nov. 5, 2015), cited by the Advocate, a 25-year sergeant with one prior adjudication forfeited twenty-five (25)

vacation days for engaging in a physical altercation with another sergeant in the office, and for unauthorized use of a Department computer. There, like here, the Respondent unsuccessfully claimed that he was provoked into the physical altercation.

This tribunal does not agree that it is appropriate to restore twelve (12) suspension days under the facts of this case. On the one hand, the court is mindful of Respondent's many years of good service with the Department. However, this tribunal also recognizes the importance of maintaining good discipline, and the destabilizing impact that a fight inside an office in the presence of others has on the command. To be sure, this entire altercation could have been avoided with more measured decision-making by both parties involved. Respondent may have felt that the sergeant needlessly interfered with his signing out on March 9, but that annoyance did not justify Respondent in initiating a confrontation on March 10 and the physical altercation that followed. Respondent failed to demonstrate the level of professionalism that is expected from a 26-year member of the Department.

Viewing the totality of the facts and circumstances presented in this case, I recommend that Respondent forfeit thirty (30) days already served on pre-trial suspension, and that two (2) suspension days previously served be restored to Respondent in accordance with Section 14-115 of the Administrative Code of the City of New York.



Respectfully submitted,

Jeff S. Adler
Assistant Deputy Commissioner Trials



POLICE DEPARTMENT CITY OF NEW YORK

From: Assistant Deputy Commissioner Trials
To: Police Commissioner
Subject: CONFIDENTIAL MEMORANDUM
DETECTIVE DERICK CUEBAS
TAX REGISTRY NO. 913757
DISCIPLINARY CASE NO. 2016-15425

Respondent was appointed to the Department on April 30, 1991.

On his last three annual performance evaluations, Respondent received two overall ratings of 4.5 "Extremely Competent/Highly Competent" in 2012 and 2013, and an overall rating of 4.0 "Highly Competent" in 2014.

Respondent has been awarded one medal for Excellent Police Duty.

[REDACTED]

From March 10, 2016, to April 10, 2016, Respondent was suspended from duty in connection with the instant case. On April 11, 2016, he was placed on modified assignment, and that duty status remains ongoing.

On May 23, 2016, Respondent was placed on Level I Disciplinary Monitoring; that monitoring remains ongoing.

Respondent's Central Personnel Index indicates no formal disciplinary history.

For your consideration.

Jeff S. Adler
Assistant Deputy Commissioner Trials